

(v) Of the advisability and availability of blood lead level screening for children under seven years of age; and

(vi) That in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR part 35, subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

(1) *Applicability.* This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Community Development Block Grant program are not covered by this paragraph:

- (i) Emergency repairs (not including lead-based paint-related emergency repairs);
- (ii) Weatherization;
- (iii) Water or sewer hook-ups;
- (iv) Installation of security devices;
- (v) Facilitation of tax exempt bond issuances which provide funds for rehabilitation;
- (vi) Other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and
- (vii) Any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed \$3,000 per unit.

(2) *Definitions.*

"Applicable surface." All intact and non-intact interior and exterior painted surfaces of a residential structure.

"Chewable surface." All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

"Defective paint surface." Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

"Elevated blood lead level or EBL." Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 µ

g/dl (micrograms of lead per deciliter of whole blood) or greater.

"Lead-based paint surface." A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm<sup>2</sup>.

(3) *Inspection and testing—(i) Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm<sup>2</sup> or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

(4) *Abatement actions.* (i) For inspections performed under § 570.608(c)(3)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under § 570.608(c)(3)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(5) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(6) *Funding for inspection, testing and abatement.* Program requirements and local program design will determine whether the cost

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of inspection, testing or abatement is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(7) *Tenant protection.* The owner/developer shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process. The owner/developer shall notify the grantee of all such actions taken.

(8) *Records.* The grantee shall keep a copy of each inspection and/or test report for at least three years.

(9) *Monitoring and enforcement.* HUD field office monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. The CPD Field Monitoring Handbook which currently includes instructions for monitoring lead-based paint requirements will be amended as appropriate. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.

(10) *Compliance with other program requirements, Federal, State and local laws.*

(i) *Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements will prevail.

(ii) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) *Grantee responsibility.* Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(iv) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See e.g., 40 CFR parts 260 through 271.)

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 61 FR 11481, Mar. 20, 1996]

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### § 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

[61 FR 5209, Feb. 9, 1996]

### § 570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128<sup>2</sup> (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at § 570.502.

[60 FR 56916, Nov. 9, 1995]

### § 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, 570.204, 570.455, or 570.703(i)).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such

<sup>2</sup> See footnote 1 at § 570.200(a)(5).

activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into

account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

[60 FR 56916, Nov. 9, 1995]

#### §570.612 Executive Order 12372.

(a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not